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CALIFORNIA PACIFIC MEDICAL CENTER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER JAY GERBER and MIRIAM
GOLDBERG,

Plaintiffs,

v,

BAYER CORPORATION AND BAYER
HEALTHCARE PHARMACEUTICALS, INC.;
BMC DIAGNOSTICS, INC.; CALIFORNIA
PACIFIC MEDICAL CENTER; GENERAL
ELECTRIC COMPANY; GE HEALTHCARE,
INC.; GE HEALTHCARE BIO-SCIENCES
CORP.;McKESSON CORPORATION;
MERRY X-RAY CHEMICAL CORP., and
Does 1 through 35,

Defendants

CASE NO. 3:07-CV-05918 JSW

**FIRST AMENDED ANSWER OF
CALIFORNIA PACIFIC MEDICAL
CENTER TO COMPLAINT TO
PLAINTIFFS' COMPLAINT**

JURY TRIAL DEMANDED

COMES NOW Defendant CALIFORNIA PACIFIC MEDICAL CENTER ("CPMC") and,
in this First Amended Answer to Plaintiffs' Complaint, answers and responds as follow:

1. This answering Defendant is without knowledge or information sufficient to form a
belief as to the truth of the allegations contained in Paragraph 1 and therefore denies them.

2. Paragraph 2 is directed to another defendant and requires no response from this
answering Defendant. Alternatively, this answering Defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and
2 therefore denies them.

3 3. Paragraph 3 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, this answering Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 and
6 therefore denies them.

7 4. Paragraph 4 is directed to another defendant and requires no response from this
8 answering Defendant. Alternatively, this answering Defendant is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and
10 therefore denies them.

11 5. Paragraph 5 is directed to another defendant and requires no response from this
12 answering Defendant. Alternatively, this answering Defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and
14 therefore denies them.

15 6. Paragraph 6 is directed to another defendant and requires no response from this
16 answering Defendant. Alternatively, this answering Defendant is without knowledge or
17 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and
18 therefore denies them.

19 7. Paragraph 7 is directed to another defendant and requires no response from this
20 answering Defendant. Alternatively, this answering Defendant is without knowledge or
21 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and
22 therefore denies them.

23 8. Paragraph 8 is directed to another defendant and requires no response from this
24 answering Defendant. Alternatively, this answering Defendant is without knowledge or
25 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and
26 therefore denies them.

27 9. Paragraph 9 is directed to another defendant and requires no response from this
28 answering Defendant. Alternatively, this answering Defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 and
2 therefore denies them.

3 10. Paragraph 10 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, this answering Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10
6 and therefore denies them.

7 11. Paragraph 11 is directed to another defendant and requires no response from this
8 answering Defendant. Alternatively, this answering Defendant is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11
10 and therefore denies them.

11 12. Paragraph 12 is directed to another defendant and requires no response from this
12 answering Defendant. Alternatively, this answering Defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12
14 and therefore denies them.

15 13. Paragraph 13 is directed to another defendant and requires no response from this
16 answering Defendant. Alternatively, this answering Defendant is without knowledge or
17 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13
18 and therefore denies them.

19 14. Paragraph 14 is directed to another defendant and requires no response from this
20 answering Defendant. Alternatively, this answering Defendant is without knowledge or
21 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14
22 and therefore denies them.

23 15. Paragraph 15 is directed to another defendant and requires no response from this
24 answering Defendant. Alternatively, this answering Defendant is without knowledge or
25 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15
26 and therefore denies them.

27 16. This answering Defendant is without knowledge or information sufficient to form a
28 belief as to the truth of the allegations contained in Paragraph 16 and therefore denies them.

1 17. This answering Defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations contained in Paragraph 17 and therefore denies them.

3 18. This answering Defendant is without knowledge or information sufficient to form a
4 belief as to the truth of the allegations contained in Paragraph 18 and therefore denies them.

5 19. Paragraph 19 does not require a response from this answering Defendant.
6 Alternatively, to the extent that a response is required, this answering Defendant is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
8 Paragraph 19 and therefore denies them.

9 20. Paragraph 20 is directed to another defendant and requires no response from this
10 answering Defendant. Alternatively, this answering Defendant is without knowledge or
11 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20
12 and therefore denies them.

13 21. Paragraph 21 is directed to another defendant and requires no response from this
14 answering Defendant. Alternatively, this answering Defendant is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21
16 and therefore denies them.

17 22. Paragraph 22 is directed to another defendant and requires no response from this
18 answering Defendant. Alternatively, this answering Defendant is without knowledge or
19 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22
20 and therefore denies them.

21 23. Paragraph 23 is directed to another defendant and requires no response from this
22 answering Defendant. Alternatively, this answering Defendant is without knowledge or
23 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23
24 and therefore denies them.

25 24. Paragraph 24 is directed to another defendant and requires no response from this
26 answering Defendant. Alternatively, this answering Defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24
28 and therefore denies them.

25. Paragraph 25 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 and therefore denies them.

26. Paragraph 26 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 and therefore denies them.

27. Paragraph 27 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 and therefore denies them.

28. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 and therefore denies them.

29. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 and therefore denies them.

30. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 and therefore denies them.

31. Paragraph 31 does not require a response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 and therefore denies them.

32. Paragraph 32 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 and therefore denies them.

33. Paragraph 33 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33
2 and therefore denies them.

3 34. Paragraph 34 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, this answering Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34
6 and therefore denies them.

7 35. This answering Defendant admits the allegations of Paragraph 35.

8 36. This answering Defendant admits the allegations of Paragraph 36.

9 37. This answering Defendant admits the allegations of Paragraph 37.

10 38. This answering Defendant is without knowledge or information sufficient to form a
11 belief as to the truth of the allegations contained in Paragraph 38 and therefore denies them.

12 39. This answering Defendant is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations contained in Paragraph 39 and therefore denies them.

14 40. This answering Defendant is without knowledge or information sufficient to form a
15 belief as to the truth of the allegations contained in Paragraph 40 and therefore denies them.

16 41. Paragraph 41 does not require a response from this answering Defendant.
17 Alternatively, to the extent that a response is required, this answering Defendant is without
18 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
19 Paragraph 41 and therefore denies them.

20 42. Paragraph 42 does not require a response from this answering Defendant.
21 Alternatively, to the extent that a response is required, this answering Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
23 Paragraph 42 and therefore denies them.

24 43. This answering Defendant is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations contained in Paragraph 43 and therefore denies them.

26 44. This answering Defendant is without knowledge or information sufficient to form a
27 belief as to the truth of the allegations contained in Paragraph 44 and therefore denies them.
28

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45. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45 and therefore denies them.

46. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 and therefore denies them.

47. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 and therefore denies them.

48. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 and therefore denies them.

49. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and therefore denies them.

50. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 and therefore denies them.

51. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 and therefore denies them.

52. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 and therefore denies them.

53. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and therefore denies them.

54. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 and therefore denies them.

55. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 and therefore denies them.

56. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 and therefore denies them.

57. To the extent that Paragraph 57 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 and therefore denies them. To the extent that this Paragraph addresses this answering Defendant, it denies the allegations contained in Paragraph 57.

58. To the extent that Paragraph 58 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 and therefore denies them. To the extent that this Paragraph addresses this answering Defendant, it denies the allegations contained in Paragraph 58.

59. To the extent that Paragraph 59 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59 and therefore denies them. To the extent that this Paragraph addresses this answering Defendant, it denies the allegations contained in Paragraph 59.

60. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 60 and therefore denies them.

61. To the extent that Paragraph 61 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 61 and therefore denies them. To the extent that this Paragraph addresses this answering Defendant, it denies the allegations contained in Paragraph 61.

62. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 62 and therefore denies them.

63. This answering Defendant denies the allegations of Paragraph 63.

64. This answering Defendant denies the allegations of Paragraph 64.

65. This answering Defendant denies the allegations of Paragraph 65.

66. This answering Defendant denies the allegations of Paragraph 66.

67. This answering Defendant denies the allegations of Paragraph 67.

68. This answering Defendant denies the allegations of Paragraph 68.

69. This answering Defendant hereby incorporates its responses to the allegations contained in Paragraphs 1 through 68 as if set forth in full herein.

70. Paragraph 70 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70 and therefore denies them.

71. Paragraph 71 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71 and therefore denies them.

72. This answering Defendant hereby incorporates its responses to the allegations contained in Paragraphs 1 through 71 as if set forth in full herein.

73. Paragraph 73 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 73 and therefore denies them.

74. Paragraph 74 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 74 and therefore denies them.

75. Paragraph 75 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 and therefore denies them.

76. Paragraph 76 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 and therefore denies them.

77. Paragraph 77 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 and therefore denies them.

78. Paragraph 78 is directed to another defendant and requires no response from this answering Defendant. Alternatively, to the extent that a response is required, this answering

1 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
2 allegations contained in Paragraph 78 and therefore denies them.

3 79. Paragraph 79 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, to the extent that a response is required, this answering
5 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
6 allegations contained in Paragraph 79 and therefore denies them.

7 80. This answering Defendant hereby incorporates its responses to the allegations
8 contained in Paragraphs 1 through 79 as if set forth in full herein.

9 81. To the extent that Paragraph 81 addresses another defendant, this answering
10 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
11 allegations contained in Paragraph 81 and therefore denies them. To the extent that the first
12 sentence of Paragraph 81 addresses this answering Defendant, it admits that Peter Jay Gerber
13 received professional medical care at its facility. Except as admitted, this answering defendant
14 denies the remaining allegations of the first sentence of Paragraph 81. To the extent that the second
15 sentence in Paragraph 81 addresses this answering Defendant, it denies the allegations contained
16 therein.

17 82. To the extent that Paragraph 82 addresses another defendant, this answering
18 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
19 allegations contained in Paragraph 82 and therefore denies them. To the extent that Paragraph 82
20 addresses this answering Defendant, it denies the allegations contained therein.

21 83. To the extent that Paragraph 83 addresses another defendant, this answering
22 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
23 allegations contained in Paragraph 83 and therefore denies them. To the extent that Paragraph 83
24 addresses this answering Defendant, it denies the allegations contained therein.

25 84. To the extent that Paragraph 84 addresses another defendant, this answering
26 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained in Paragraph 84 and therefore denies them. To the extent that Paragraph 84
28 addresses this answering Defendant, it denies the allegations contained therein.

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85. To the extent that Paragraph 85 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 85 and therefore denies them. To the extent that Paragraph 85 addresses this answering Defendant, it denies the allegations contained therein.

86. To the extent that Paragraph 86 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 86 and therefore denies them. To the extent that Paragraph 86 addresses this answering Defendant, it denies the allegations contained therein.

87. To the extent that Paragraph 87 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 and therefore denies them. To the extent that Paragraph 87 addresses this answering Defendant, it denies the allegations contained therein.

88. To the extent that Paragraph 88 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 88 and therefore denies them. To the extent that Paragraph 88 addresses this answering Defendant, it denies the allegations contained therein.

89. This answering Defendant hereby incorporates its responses to the allegations contained in Paragraphs 1 through 88 as if set forth in full herein.

90. To the extent that Paragraph 90 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 and therefore denies them. To the extent that Paragraph 90 addresses this answering Defendant, it denies the allegations contained therein.

91. To the extent that Paragraph 91 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 and therefore denies them. To the extent that Paragraph 91 addresses this answering Defendant, it denies the allegations contained therein.

92. To the extent that Paragraph 92 addresses another defendant, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the

1 allegations contained in Paragraph 92 and therefore denies them. To the extent that Paragraph 92
2 addresses this answering Defendant, it denies the allegations contained in therein.

3 93. This answering Defendant hereby incorporates its responses to the allegations
4 contained in Paragraphs 1 through 92 as if set forth in full herein.

5 94. To the extent that Paragraph 94 addresses another defendant, this answering
6 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
7 allegations contained in Paragraph 94 and therefore denies them. To the extent that Paragraph 94
8 addresses this answering Defendant, it denies the allegations contained therein.

9 95. To the extent that Paragraph 95 addresses another defendant, this answering
10 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
11 allegations contained in Paragraph 95 and therefore denies them. To the extent that Paragraph 95
12 addresses this answering Defendant, it denies the allegations contained therein.

13 96. To the extent that Paragraph 96 addresses another defendant, this answering
14 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
15 allegations contained in Paragraph 96 and therefore denies them. To the extent that Paragraph 96
16 addresses this answering Defendant, it denies the allegations contained therein.

17 97. To the extent that Paragraph 97 addresses another defendant, this answering
18 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
19 allegations contained in Paragraph 97 and therefore denies them. To the extent that Paragraph 97
20 addresses this answering Defendant, it denies the allegations contained therein.

21 98. This answering Defendant hereby incorporates its responses to the allegations
22 contained in Paragraphs 1 through 97 as if set forth in full herein.

23 99. Paragraph 99 is directed to another defendant and requires no response from this
24 answering Defendant. Alternatively, this answering Defendant is without knowledge or
25 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99
26 and therefore denies them.

27 100. Paragraph 100 is directed to another defendant and requires no response from this
28 answering Defendant. Alternatively, this answering Defendant is without knowledge or

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information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 and therefore denies them.

101. Paragraph 101 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 and therefore denies them.

102. Paragraph 102 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 and therefore denies them.

103. Paragraph 103 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 and therefore denies them.

104. Paragraph 104 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 104 and therefore denies them.

105. Paragraph 105 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 and therefore denies them.

106. Paragraph 106 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 106 and therefore denies them.

107. Paragraph 107 is directed to another defendant and requires no response from this answering Defendant. Alternatively, this answering Defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107
2 and therefore denies them.

3 108. Paragraph 108 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, this answering Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108
6 and therefore denies them.

7 109. This answering Defendant hereby incorporates its responses to the allegations
8 contained in Paragraphs 1 through 108 as if set forth in full herein.

9 110. Paragraph 110 is directed to another defendant and requires no response from this
10 answering Defendant. Alternatively, this answering Defendant is without knowledge or
11 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110
12 and therefore denies them.

13 111. Paragraph 111 is directed to another defendant and requires no response from this
14 answering Defendant. Alternatively, this answering Defendant is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111
16 and therefore denies them.

17 112. Paragraph 112 is directed to another defendant and requires no response from this
18 answering Defendant. Alternatively, this answering Defendant is without knowledge or
19 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112
20 and therefore denies them.

21 113. This answering Defendant hereby incorporates its responses to the allegations
22 contained in Paragraphs 1 through 112 as if set forth in full herein.

23 114. Paragraph 114 is directed to another defendant and requires no response from this
24 answering Defendant. Alternatively, this answering Defendant is without knowledge or
25 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114
26 and therefore denies them.

27 115. Paragraph 115 is directed to another defendant and requires no response from this
28 answering Defendant. Alternatively, this answering Defendant is without knowledge or

1 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115
2 and therefore denies them.

3 116. Paragraph 116 is directed to another defendant and requires no response from this
4 answering Defendant. Alternatively, this answering Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116
6 and therefore denies them.

7 117. Paragraph 117 is directed to another defendant and requires no response from this
8 answering Defendant. Alternatively, this answering Defendant is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117
10 and therefore denies them.

11 118. Paragraph 118 is directed to another defendant and requires no response from this
12 answering Defendant. Alternatively, this answering Defendant is without knowledge or
13 information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118
14 and therefore denies them.

15 119. This answering Defendant hereby incorporates its responses to the allegations
16 contained in Paragraphs 1 through 118 as if set forth in full herein.

17 120. Paragraph 120 sets forth a legal conclusion to which no response is required.
18 Alternatively, to the extent that a response is deemed to be required, this answering Defendant
19 denies the allegations of Paragraph 120.

20 121. To the extent that Paragraph 121 addresses other defendants, this answering
21 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
22 allegations contained in Paragraph 121 and therefore denies them. To the extent that Paragraph
23 121 addresses this answering Defendant, it denies the allegations contained therein, including its
24 sub-paragraphs (a) through (d).

25 122. To the extent that Paragraph 122 addresses other defendants, this answering
26 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
27 allegations contained in Paragraph 122 and therefore denies them. To the extent that Paragraph
28 122 addresses this answering Defendant, it denies the allegations contained therein.

123. To the extent that Paragraph 123 addresses other defendants, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 and therefore denies them. To the extent that Paragraph 123 addresses this answering Defendant, it denies the allegations contained therein.

124. This answering Defendant hereby incorporates its responses to the allegations contained in Paragraphs 1 through 123 as if set forth in full herein.

125. This answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 125 and therefore denies them.

126. This answering Defendant denies the allegations of Paragraph 126.

This answering Defendant denies that Plaintiffs are entitled to relief sought in their Prayer for Relief. In addition, this answering Defendant specifically denies that Plaintiffs are entitled to punitive damages and attorney's fees to the extent that they are sought from this answering Defendant.

This answering Defendant denies each and every statement, allegation and averment contained in the Complaint that has not been expressly admitted above.

Discovery and investigation may disclose that one or more of the following additional defenses are available to this answering Defendant and, accordingly, this answering Defendant asserts the following defenses. To the extent that further discovery and investigation warrant, this answering Defendant may withdraw one or more of the following defenses as appropriate. Further, because discovery and investigation have not been completed in this matter, this answering Defendant expressly reserves the right to amend this Answer to assert further factual or legal defenses to Plaintiffs' Complaint which may be justified in this action. Accordingly, further answering and by way of additional defense, this answering Defendant states as follows:

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs have failed to state facts sufficient to constitute a cause or causes of action against this answering defendant.

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SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs' action is barred by all applicable statute of limitations, including but not limited to Code of Civil Procedure section 340.5. In accordance with the provisions of California Code of Civil Procedure, this answering defendant requests a separate trial of this affirmative defense of the statutes of limitations before the trial of any other issues.

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that some or all of plaintiffs' claims are barred or otherwise without basis for failure to comply with Code of Civil Procedure section 364.

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, plaintiffs' claims are barred, in whole or in part, by laches, waiver and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant, generally and specifically, denies that any wrongdoing, negligence, or liability on its part. However, should it be determined that this answering defendant is liable, which premise is denied and asserted solely for purposes of interposing this defense, then Defendant further alleges that the injuries and losses alleged by Plaintiffs, if there were any, were proximately caused by the negligence, carelessness and/or fault of other persons, firms, corporations, or entities other than this answering defendant, and that the court is respectfully requested to instruct the jury to apportion fault for any injury and loss, if any there were, which were negligently caused by and/or amongst all persons, firms, corporations or other entities, other than this answering defendant, who they find was negligent, careless and/or at fault for the injuries and losses, if any there were.

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges on information and belief that Plaintiffs herein are barred from any

recovery herein on the basis that Plaintiffs' own negligence was the sole and proximate cause of the injuries sustained herein, if any. However, if a finding is made that this answering defendant was negligent and proximately contributed to Plaintiffs' injuries and/or damages, which premise is denied and asserted solely for the purposes of interposing this defense, Plaintiffs' amount of recovery, if any, shall be reduced on the basis of his comparative negligence which contributed to the incident herein and the injuries and/or damages and claims upon which Plaintiffs are seeking recovery against this answering defendant.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, the injuries and damages claimed by Plaintiffs, if any there were, resulted from an intervening or superseding cause and/or causes, and any act or omission on the part of this answering defendant was not the proximate cause of Plaintiffs' alleged injuries and damages.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR AN EIGHTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that any injuries or damages suffered by Plaintiffs herein were caused by risks, hazards and dangers to which Plaintiffs voluntarily consented and voluntarily assumed. Plaintiffs' recovery is barred, or should be reduced, by Plaintiffs' assumption of the risk.

NINTH AFFIRMATIVE DEFENSE

AS AND FOR A NINTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant may elect to introduce evidence of amounts paid or payable, if any, as a benefit to plaintiffs, pursuant to Civil Code section 3333.1. Defendant denies that Plaintiffs have been damaged or injured in any amount, and raises the foregoing as an affirmative defense only, and premises liability solely for purposes of interposing this defense.

TENTH AFFIRMATIVE DEFENSE

AS AND FOR A TENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs are not entitled to recover damages for non-economic losses in excess of the amount specified in Civil Code section 3333.2.

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ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR AN ELEVENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that certain limitations in regard to fees shall apply to any recovery for damages, if any is had, pursuant to Business and Professions Code section 6146.

TWELFTH AFFIRMATIVE DEFENSE

AS AND FOR A TWELFTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that if there is a judgment in favor of said Plaintiffs and against this answering defendant, and if such recovery exceeds \$50,000, that such damages be subject to periodization pursuant to California Code of Civil Procedure section 667.7.

THIRTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A THIRTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges, on information and belief, that certain sums have been or will be paid to Plaintiffs in compensation for the same damages they seek against this Defendant and therefore said Defendant is entitled to a set-off in said amount against any judgment or recovery Plaintiffs may recover against this Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTEENTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs failed to mitigate, minimize or avoid damages allegedly caused by Defendant, and Defendant is therefore entitled to have any sum to which Plaintiffs are entitled reduced by such sums as would have been mitigated, minimized or avoided.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that defendant's conduct alleged by plaintiffs, of which they complain, was at all times relevant, justified, privileged or otherwise reasonable.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs knowingly and voluntarily consented to

the treatment rendered by this answering defendant and were advised of all of the necessary potential risks, complications, benefits and alternatives of that treatment.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs' action is barred by the provisions of California Civil Code section 1714.8, in that the injuries and damages complained of by plaintiffs, if any, were solely as the result of the natural course of a disease or condition and/or expected result of reasonable treatment rendered for the disease or condition by this answering defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR AN EIGHTEENTH SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that the alleged injuries and damages, if any, were the result of unavoidable circumstances that could not have been prevented by any person, including this answering defendant.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that the injury, damage or loss suffered by the plaintiffs herein are legally caused by the negligent or willful failure of the plaintiffs to follow the advice and instructions of the attending health care providers, including this answering defendant, and in otherwise failing to exercise ordinary care on his own behalf.

TWENTIETH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTIETH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs' alleged injuries, if any, occurred while plaintiffs were under the care and/or control of individuals or entities other than this answering defendant.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-FIRST, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that it is entitled to the full benefits and protections

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provided under sections 1430 et seq., of the Civil Code (Proposition 51), otherwise entitled the Fair Responsibility Act of 1986.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-SECOND, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that plaintiffs did not detrimentally rely upon any alleged representations or warranties made by this answering defendant. Plaintiffs have failed to state facts sufficient to support a cause of action for breach of warranty, express or implied, against this answering defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-THIRD, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs' complaint fails to state a claim against this answering defendant upon which relief can be granted as to attorney's fees, costs, expenses, prejudgment interest, post-judgment interest, estoppel or restitution.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-FOURTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs' complaint fails to state a claim against this answering defendant upon which punitive or exemplary damages could or should be awarded against this answering defendant. There is no act or omission pursuant to which Plaintiffs can recover punitive damages against this answering defendant, such that recovery of punitive or exemplary damages would violate the state and federal constitutional rights of this answering defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-FIFTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, plaintiffs' demand for punitive or exemplary damages from this answering defendant, if they are so sought, violates the provisions of California Code of Civil Procedure §425.13.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-SIXTH, SEPARATE, DISTINCT AND AFFIRMATIVE DEFENSE, this answering defendant alleges that Plaintiffs' complaint fails to state a claim for

1 unlawful conduct under the California Consumer Legal Remedies Act, California Civil Code §§
2 1750 *et seq.* because this statute is inapplicable to this action and/or to this answering defendant.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 AS AND FOR A TWENTY-SEVENTH, SEPARATE, DISTINCT AND AFFIRMATIVE
5 DEFENSE, this answering defendant adopts and incorporates by reference all defenses pleaded by
6 the other defendants except to the extent that they are inconsistent to the specific affirmative
7 defenses pleaded in this Answer.

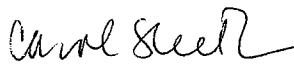
8 Defendant denies that Plaintiffs have been injured in any amount, and raises the foregoing
9 as affirmative defenses only.

10 WHEREFORE, this answering defendant prays:

- 11 1. That Plaintiffs take nothing by way of their Complaint on file herein;
- 12 2. That this answering defendant be dismissed;
- 13 3. That this answering defendant recover costs of suit incurred herein;
- 14 4. And for such other and further relief as the Court may deem just and proper.

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16 Dated: January 7, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

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18 By: 
19 Daniel J. Meagher
20 Carol Sleeth
21 Attorneys for Defendant
22 CALIFORNIA PACIFIC MEDICAL CENTER
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